IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5934 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION LIMITED

Versus

BHIKHALAL PUNABHAI BHATI

Appearance:

1. Special Civil Application No. 5934 of 2001

MR UI VYAS for Petitioner No. 1

MR TR MISHRA for Respondent No. 1 on caveat.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/02/2002

ORAL JUDGEMENT

Rule. Service of Rule is waived by Mr. T.R.Mishra, learned advocate appearing for the respondent workman on caveat. In the facts and circumstances of the case and with the consent of the learned advocates for

the parties, the matter is taken up for final hearing today itself.

By way of this petition under Article 227 of the Constitution of India, the petitioner has challenged the award made by the labour Court, Rajkot in Reference (LCR) No. 255 of 1996 dated 23.3.2001 whereunder the labour court has directed the petitioner corporation to reinstate the respondent workman in service with continuity of service and without back wages. The facts leading to the filing of the present petition are as under:

The respondent workman was working as a conductor in the petitioner corporation. On 2.9.1992, the checking party found certain financial irregularities while the respondent was on duty on Halvad Tarnetar Route for which departmental inquiry was initiated against the respondent and thereafter, the respondent was dismissed from service. Said action was thereafter challenged by the respondent workman before the labour court by filing aforesaid reference wherein the labour court, Rajkot after hearing both the parties and also after considering the evidence on record, directed the petitioner to reinstate the respondent workman in service with continuity of service but without back wages for the intervening period which is under challenge in this petition.

During the course of hearing, learned advocate Mr. Vyas appearing for the petitioner corporation has submitted that before the labour court, the respondent workman has admitted the departmental inquiry and has not challenged the legality, validity and propriety of such inquiry and the findings recorded therein and, therefore, the labour court ought not to have exercised the powers under section 11-A of the Industrial Disputes Act, 1947 in view of the act of serious misconduct and dishonesty and misappropriation on the part of the respondent in not issuing tickets to the passengers. He has also submitted that the interference of the labour court with the punishment imposed by the disciplinary authority of the petitioner corporation is totally unjustified and unwarranted in view of the past record of the respondent workman wherein he has committed about 21 defaults in past. He has also submitted that the labour court has erred in reappraising the evidence led in departmental inquiry and the findings recorded by the authority concerned. He has submitted that in reappraising such evidence and the findings of the disciplinary authority, the labour court has committed jurisdictional error

committed by the labour court in exercising the powers under section 11-A of the Industrial Disputes Act, 1947 and, therefore, this Court should interfere with the impugned award of reinstatement.

On the other hand, learned advocate Mr. Mishra appearing for the respondent workman on caveat has submitted that it is true that before the labour court, legality, validity and propriety of the inquiry was admitted by the respondent workman but that does not mean that there was admission on the part of the respondent workman about the charge of dishonesty and misappropriation. According to him, mere former procedure of inquiry was not challenged by the workman but the findings were under challenge and that issue has been raised by the labour court rightly in the proceedings before it and the issue raised by the labour court was to the effect that whether the findings recorded by the inquiry officer are legal and valid or not and whether the punishment imposed upon the respondent wormkan on the basis of such findings is proportionate or not. He has submitted that this issue has rightly been examined by the labour court in exercise of the powers under Section 11-A of the Industrial Disputes Act, 1947 and in doing so, the labour court has not committed any jurisdictional error and/or material irregularity in view of the decision of the apex court in case of Workmen of M/s. Firestone Tyre and Rubber Co. of India P. Ltd. versus The Management and others reported in A.I.R. 1973 S.C. page 1227. Reliance has been placed upon the observations made by the apex court in para 37 of the said decision. He has also submitted that after reappraising the evidence of the inquiry officer, the labour court has, in terms, come to the conclusion that none of the charges have been proved against the respondent workman and the labour court has elaborately discussed each and every evidence and aspects of the matter and has thereafter concluded that none of the charges have been proved against the respondent workman and thereafter labour court has made award of reinstatement of the respondent with continuity of service but without back wages in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947. He has submitted that the labour court has not recorded the finding that the workman has been gainfully employed during the intervening period but on the basis of the admission made by the workman that one of his son is earning Rs.1000.00 to Rs.1200.00 and his younger son is earning Rs.200.00 per month, the labour court has refused to grant back wages. According to him, the reasons for denying the back wages are not convincing for want of

finding that the workman has been gainfully employed during the intervening period. However, he has submitted that the workman is not challenging that part of the award and has also submitted that the labour court has not committed any jurisdictional error and/or material irregularity which would warrant interference of this Court in exercise of the powers under Article 227 of the Constitution of India.

I have considered the submissions made by the learned advocates for the respective parties. I have also perused the award made by the labour court. The labour court has considered one aspect of the matter that the legality and validity of the inquiry has not been challenged which would mean that the procedural aspects have not been challenged but it has been made clear that the findings recorded by the inquiry officer have been challenged and issue to that effect has been framed by the labour court. The labour court has framed two issues. One was; whether the findings recorded by the inquiry officer are legal and valid or not and the other was; on the basis of such findings, whether the punishment imposed by the authority is proportionate or not. These two issues have been examined in detail by the labour court after reappraising the evidence which was led in the departmental inquiry, the labour court has discussed in detail and has assigned the reasons and has concluded that the charges levelled against the respondent workman have not been proved by the petitioner. Each and every aspects of the charges levelled against the respondent workman were examined by the labour court and are supported by cogent and convincing reasons for coming to the conclusion that the charges levelled against the respondent have not been proved by the petitioner. He has thus submitted that the labour court has reappraised the evidence of the departmental inquiry and has come to its own conclusion for which the labour court is having power under section 11-A of the Industrial Disputes Act, 1947. This aspect has been examined by the apex court in case of Workmen of M/s. Firestone Tyre and Rubber Co. of India P. Ltd. versus The Management and others reported in A.I.R. 1973 S.C. page 1227 where answer has been given to this question in para 37 of the decision. Para 37 of the said decision is reproduced as under:

"37. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11A by the Tribunal is reached only when it has to consider the punishment after having accepted the

> finding of guilt recorded by an employer. It has to be remembered that a tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately, it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate up on the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry, Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognized in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11A."

Once the labour court has come to the conclusion that the charges levelled against the respondent workman have not been proved from the record and the findings recorded by the inquiry officer is vitiated, then, the question of considering the past record of the delinquent does not arise. Past record of the delinquent is required to be examined only when the charge levelled against the delinquent has been proved and not otherwise. Here, the labour court has clearly come to the conclusion that the charges levelled against the respondent workman have not been proved by the petitioner and, therefore, there was no necessity for the labour court to consider and examine the past record of the respondent workman. The labour court was, therefore, right in not examining and considering the past record of the respondent workman though past record has been referred by the labour court that there were some misconducts committed by the respondent workman in past.

The labour court has also passed the balanced order in reinstating the workman after coming to the

conclusion that the charges levelled against the respondent workman have not been proved and considering the income of the family members namely income of his two sons, the labour court was of the view that the back wages cannot be granted and, therefore, considering these aspects, the labour court has not awarded back wages. Therefore, it cannot be said that the labour court has committed any jurisdictional error or material irregularity in directing the petitioner to reinstate the respondent wormkan in service without continuity of service. It is a clear case of due application of mind. No error has been committed by the labour court in passing the award of reinstatement with continuity of service which would warrant interference of this Court in exercise of the powers under Article 226 and/or 227 of the Constitution of India.

In case of IOB versus IOB Staff Workmen Union reported in 2000 SCC Lab. and Service, 471, the apex court has observed that the interference with the pure findings of fact and reappreciation of evidence is totally impermissible. The High Court is not having appellate powers and insufficiency of evidence or another view is possible has been held to be no ground for interference with the order of the lower authority. Similarly, recently, in case of Sugarbhai M. Siddiq versus Ramesh S. Hankare, reported in 2001-8 SCC 477, the apex court has examined the scope of powers under Article 226/227 of the Constitution of India and has held that the High court must ascertain whether such court or tribunal is having jurisdiction to deal with the matter or not and whether the order in question is vitiated by procedural irregularity or not. In the instant case, learned advocate Mr. Vyas has not been able to point out any procedural irregularity or that the award in question is vitiated by procedural irregularity. He has also not been able to point out that the labour court was not having the jurisdiction to deal with the matter.

Recently, in 2002scope of jurisdiction under Article 226 and/or 227 has been examined by the apex court in case of Ouseph Mathai and Others versus M. Abdul Khadir reported in (2002) 1 SCC page 319. In the said decision, the apex court has held that the jurisdiction under Article 227 of the Constitution cannot be invoked, as a matter of right. As regards the scope of jurisdiction under Article 227 of the Constitution of India, it has been held that mere wrong decision is not a ground for exercise of jurisdiction under Article 227. The apex court has held that the High Court may intervene

under Article 227 only where it is established that the lower court or tribunal has been guilty of grave dereliction of duty and flagrant abuse of power, which has resulted in grave injustice to any party.

Recently, in case of Roshan Deen versus Preeti Lal reported in (2002) 1 SCC 100, as regards the purpose of powers conferred on High Court under Article 226 and 227, the apex court has observed that the purpose is to advance justice, not to thwart it. It has been further observed that even where justice is the by product of an erroneous interpretation of law, High Court ought not to wipe out such justice in the name of correcting the error of law. In para 12 of the said decision, the apex court has observed as under:

"12. We are greatly disturbed by the insensivity reflected in the impugned judgment rendered by the learned Single Judge in a case when judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it (vide State of U.P. v. District Judge, Unnao). The very purpose of such constitutional powers being conferred on the High courts is that no man should be subjected to injustice by violating the law. The lookout of the High court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law."

In view of the above observations made by the apex court as regards powers of this Court in a petition under Articles 226 and 227 of the Constitution of India, and also considering the scope of jurisdiction of the labour court under section 11-A of the Industrial Disputes Act, 1947, the labour court has been justified in reappraising the evidence as well as the findings recorded by the inquiry officer, according to my opinion,

the labour court was right in making the award of reinstatement with continuity of service which is not suffering from the vice of jurisdictional error or procedural material irregularity and, therefore, the award in question does not require any interference of this Court in this petition under Article 227 of the Constitution of India. No other contention was raised by Mr. Vyas, learned advocate for the petitioner. There is no substance in this petition. Therefore, this petition is required to be rejected.

For the reasons recorded hereinabove, this petition is dismissed.

At this stage, learned advocate Mr. Mishra appearing for the respondent workman has submitted that the award in question was made by the labour court concerned on 26th March, 2001 and though no stay has been operating against the award in question, the respondent workman has not been reinstated in service till this date nor the petitioner has paid the wages to the respondent workman under section 17-B of the Industrial Disputes Act, 1947 though the petition has been filed by the petitioner in the month of June, 2001. In light of these submissions, he has prayed for directing the petitioner corporation to reinstate the respondent workman in service within some reasonable period and to pay full wages to the respondent workman from the date of the award till the date of actual reinstatement. Learned advocate Mr. Vyas appearing for the petitioner corporation has submitted that the petitioner corporation will implement the award in question within some reasonable period. However, considering the date of the award and also considering the fact that till this date, the workman has not been reinstated in service, it is directed to the petitioner corporation to reinstate the respondent workman within one month from the date of receipt of copy of this order. It is also directed to the petitioner corporation to pay to the respondent workman full wages from the date of the award i.e. 23rd March, 2001 till the date of his actual reinstatement within two months from the date of receipt of copy of this order. Rule is discharged. There shall be no order as to costs.

22.2.2002. (H.K. Rathod,J.)

Vyas